

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JOHNEY R. MOTES, JR.

PLAINTIFF

vs.

Civil Action No. 1:95cv119-D-D

UNIVERSAL FURNITURE INDUSTRIES, INC.,
EQUIPMENT ENGINEERING COMPANY, INC.,
and HYSTER COMPANY, now NAACO Materials
Handling Group, Inc.

DEFENDANTS

MEMORANDUM OPINION

The motion of the defendant Hyster Company, now NAACO Materials Handling Group, Inc. (“NAACO”), for summary judgment came on for consideration by the court. By order dated August 27, 1996, the undersigned granted the motion and dismissed the plaintiff’s claims of defective design and manufacture of a forklift involved in the instant cause. Motes v. Universal Furniture, et al., Civil Action No. 1:95cv119-D-D (N.D. Miss. Aug. 27, 1996) (Order Granting in Part Motion for Summary Judgment). The remainder of the motion is now before the court.

Factual Background¹

In August of 1993, Day Detective Services, Inc. (“Day Detectives”), employed the plaintiff Johney Motes, Jr. Apparently, in the course of his employment with Day Detectives, the plaintiff installed a fire alarm in the New Albany, Mississippi, plant of the defendant Universal Furniture Industries, Inc. (“Universal”). In order to perform this task, a Universal employee lifted Motes into the air on a work platform mounted upon a Hyster forklift. After working at a

¹ In ruling on a motion for summary judgment, the court is not to make credibility determinations, weigh evidence, or draw from the facts legitimate inferences for the movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Rather, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. Anderson, 477 U.S. at 255. The court’s factual summary is so drafted.

height of approximately eight (8) to ten (10) feet, Motes asked the forklift driver to lower him to the plant floor. When the forks of the lift failed to properly descend, the driver manipulated the forklift controls and the forks suddenly dropped to the ground. The plaintiff's resulting fall to the floor of the plant resulted in injuries to the plaintiff, and this action followed.

. Discussion

. Summary Judgment Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case.

Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986).

Once a properly supported motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202

(1986); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where the record, taken as

a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587,

106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Kralj, 968 F.2d 500, 503

(5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party

opposing the motion. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

. "Failure to Warn" Claim

In light of this court's August 27 order, the only claim of the plaintiff remaining against the defendant NAACO is that of its alleged "failure to warn." More properly stated, the plaintiff charges that NAACO, in the manufacture and sale of the forklift, failed to exercise reasonable care to inform Universal of a dangerous condition of the forklift or of the facts which made it likely to be dangerous. See Swan v. I.P., Inc., 613 So.2d 846, 852 (Miss. 1993). NAACO, in its motion for summary judgment, argues that it is entitled to summary judgment on this claim because there is no evidence that any such failure to warn was a proximate contributing cause of the plaintiff's injuries. In particular, the defendant has presented evidence to this court that the person operating the Hyster forklift at the time of the plaintiff's injury had never read the operating manual for that forklift. Because he had never read the manual, NAACO continues, it is irrelevant what warnings that manual did or did not contain.

The plaintiff responds to this part of NAACO's motion and states that he can indeed demonstrate a genuine issue of material fact as to whether a failure to warn was a proximate contributing cause of the plaintiff's injuries. He provides the court with the affidavit of Universal employee Joe Cochran, wherein Cochran states in part:

Had Hyster warned [Universal] of such a hazard associated with the operation of the subject forklift, it is my opinion that this warning, the corrective action necessary to be performed in the event the hazard [was] encountered, and the consequences of the failure to take such corrective action would have been communicated to all Hyster forklift operators and, more importantly, to their supervisors, so that no employees of [Universal] would have ever operated a Hyster forklift for any purpose whatsoever without being aware of the hazard and the corrective action required . . .

When considering all of the evidence before the court, including Mr. Cochran's affidavit, the court finds that there exist genuine issues of material fact as to whether NAACO's alleged failure to warn was a proximate contributing cause of the plaintiff's injuries. The remainder of the

defendant's motion for summary judgment shall be denied.

III. Conclusion

There exist genuine issues of material fact in the case at bar as to whether the defendant NAACO failed to exercise reasonable care to warn consumers and ultimate users of a dangerous condition of its product forklift or of the facts which made the forklift likely to be dangerous. The defendant NAACO is not entitled to the entry of a judgment as a matter of law on this claim of the plaintiff, and the court shall deny its motion for summary judgment as to this claim.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of April 2001.

United States District Judge

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DEFENDANTS

ORDER DENYING IN PART DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

By order dated August 27, 1996, this court granted in part the defendant NAACO's motion for summary judgment. Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

1) the motion of the defendant Hyster Company, now NAACO Materials Handling Group, Inc., for the entry of summary judgment on the plaintiff's claims is hereby DENIED as to the remaining claims of the plaintiff in this cause.

All memoranda, depositions, affidavits and other matters considered by this court in denying the defendant NAACO's motion for summary judgment are hereby incorporated and made a part of the record in this cause.

SO ORDERED, this the _____ day of April 2001.

United States District Judge